

Department of Veterans Affairs

§ 20.302

not filed by a person listed in paragraph (a) of this section, and the claimant is rated incompetent by the Department of Veterans Affairs or has a physical, mental, or legal disability which prevents the filing of an appeal on his or her own behalf, a Notice of Disagreement may be filed by a fiduciary appointed to manage the claimant's affairs by the Department of Veterans Affairs or a court, or by a person acting as next friend if the appointed fiduciary fails to take needed action or no fiduciary has been appointed.

(c) *Claimant under disability and able to file.* Notwithstanding the fact that a fiduciary may have been appointed for a claimant, an appeal filed by a claimant will be accepted.

(Authority: 38 U.S.C. 7105(b)(2)(A))

§ 20.205 Rule 205. Withdrawal of appeal.

(a) *When and by whom filed.* Only an appellant, or an appellant's authorized representative, may withdraw an appeal. An appeal may be withdrawn as to any or all issues involved in the appeal.

(b) *Filing—(1) Content.* Appeal withdrawals must include the name of the veteran, the name of the claimant or appellant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf), the applicable Department of Veterans Affairs file number, and a statement that the appeal is withdrawn. If the appeal involves multiple issues, the withdrawal must specify that the appeal is withdrawn in its entirety, or list the issue(s) withdrawn from the appeal.

(2) *Where to file.* Appeal withdrawals should be filed with the Board.

(3) *When effective.* An appeal withdrawal is effective when received by the Board. A withdrawal received after the Board issues a final decision under Rule 1100(a) (§20.1100(a)) will not be effective.

(c) *Effect of filing.* Withdrawal of an appeal will be deemed a withdrawal of the Notice of Disagreement as to all issues to which the withdrawal applies. Withdrawal does not preclude filing a new Notice of Disagreement pursuant to this subpart, a request for higher-level review under 38 U.S.C. 5104B, or a

supplemental claim under 38 U.S.C. 5108, as to any issue withdrawn, provided such filing would be timely under these rules if the withdrawn appeal had never been filed.

(Authority: 38 U.S.C. 7105)

§§ 20.206–20.299 [Reserved]

Subpart D—Evidentiary Record

§ 20.300 Rule 300. General.

(a) Decisions of the Board will be based on a de novo review of the evidence of record at the time of the agency of original jurisdiction decision on the issue or issues on appeal, and any additional evidence or testimony submitted pursuant to this subpart, as provided in §20.801.

(b) *Waiver of appellant's right to submit evidence.* For appeals described in 20.302 and 20.303, an appellant has a right to submit evidence during a period of 90 days, unless this right is waived by the appellant or representative at any time prior to the expiration of the applicable 90-day period. Such a waiver must be in writing or, if a hearing on appeal is conducted pursuant to 20.302, the waiver must be formally and clearly entered on the record orally at the time of the hearing.

(Authority: 38 U.S.C. 7104)

[84 FR 182, Jan. 18, 2019]

§ 20.301 Rule 301. Appeals with no request for a Board hearing and no additional evidence.

For appeals in which the appellant requested, on the Notice of Disagreement, direct review by the Board without submission of additional evidence and without a Board hearing, the Board's decision will be based on a review of the evidence of record at the time of the agency of original jurisdiction decision on the issue or issues on appeal.

(Authority: 38 U.S.C. 7105, 7107, 7113(a))

[84 FR 182, Jan. 18, 2019]

§ 20.302 Rule 302. Appeals with a request for a Board hearing.

(a) Except as described in paragraphs (b) and (c) of this section, for appeals in which the appellant requested, on the

§ 20.303

Notice of Disagreement, a Board hearing, the Board's decision will be based on a review of the following:

(1) Evidence of record at the time of the agency of original jurisdiction's decision on the issue or issues on appeal;

(2) Evidence submitted by the appellant or his or her representative at the hearing, to include testimony provided at the hearing; and

(3) Evidence submitted by the appellant or his or her representative within 90 days following the hearing.

(b) In the event that the hearing request is withdrawn pursuant to §20.704(e), the Board's decision will be based on a review of evidence described in paragraph (a)(1) of this section, and evidence submitted by the appellant or his or her representative within 90 days following receipt of the withdrawal.

(c) In the event that the appellant does not appear for a scheduled hearing, and the hearing is not rescheduled subject to §20.704(d), the Board's decision will be based on a review of evidence described in paragraph (a)(1) of this section, and evidence submitted by the appellant or his or her representative within 90 days following the date of the scheduled hearing.

(Authority: 38 U.S.C. 7105, 7107, 7113(b))

[84 FR 182, Jan. 18, 2019]

§ 20.303 Rule 303. Appeals with no request for a Board hearing, but with a request for submission of additional evidence.

For appeals in which the appellant requested, on the Notice of Disagreement, an opportunity to submit additional evidence without a Board hearing, the Board's decision will be based on a review of the following:

(a) Evidence of record at the time of the agency of original jurisdiction's decision on the issue or issues on appeal; and

(b) Evidence submitted by the appellant or his or her representative:

(1) With the Notice of Disagreement or within 90 days following receipt of the Notice of Disagreement; or,

(2) If the appellant did not request an opportunity to submit additional evidence on the Notice of Disagreement, but subsequently requested to submit additional evidence pursuant to Rule 202, (§20.202(c)(2)(ii)), within 90 days fol-

38 CFR Ch. I (7–1–19 Edition)

lowing VA's notice that the appeal has been moved to the docket described in §20.800(a)(ii).

(Authority: 38 U.S.C. 7105, 7107, 7113(c))

[84 FR 182, Jan. 18, 2019]

§§ 20.304–20.399 [Reserved]

Subpart E—Appeal in Simultaneously Contested Claims

SOURCE: 84 FR 182, Jan. 18, 2019, unless otherwise noted.

§ 20.400 Rule 400. Notification of the right to appeal in a simultaneously contested claim.

All interested parties will be specifically notified of the action taken by the agency of original jurisdiction in a simultaneously contested claim and of the right and time limit for submitting a Notice of Disagreement to the Board, as well as hearing and representation rights.

§ 20.401 Rule 401. Who can file an appeal in simultaneously contested claims.

In simultaneously contested claims, any claimant or representative of a claimant may file a Notice of Disagreement within the time limits set out in Rule 402 (§20.402).

(Authority: 38 U.S.C. 7105(b)(2), 7105A)

§ 20.402 Rule 402. Time limits for filing Notice of Disagreement in simultaneously contested claims.

In simultaneously contested claims, the Notice of Disagreement from the person adversely affected must be filed within 60 days from the date of mailing of the notification of the determination to him or her; otherwise, that determination will become final. The date of mailing of the letter of notification will be presumed to be the same as the date of that letter for purposes of determining whether a Notice of Disagreement has been timely filed.

(Authority: 38 U.S.C. 7105A)